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Common elements of statistical legislation

Guidance on common elements of statistical legislation

Addendum

Results of the consultation on the Guidance on common elements of statistical legislation

Note by the Secretariat

Summary

The note summarizes the comments by members of the Conference of European Statisticians on the *Guidance on common elements of statistical legislation* (ECE/CES/2018/6). The Secretariat carried out the electronic consultation in April/May 2018.

A total of 40 countries and one international organization replied. All responding countries and the organization supported the endorsement of the Guidance, subject to amendments resulting from the electronic consultation. The note presents the substantive comments received, together with the replies of the UNECE Task Force on Common Elements of Statistical Legislation, including suggestions for amendments to address the comments. In the electronic consultation, Australia suggested changing the title of the Guidance to fully capture its contents, since it presents much more than the common elements of statistical legislation. The Task Force agreed to change the title of the document to *Guidance on modernising statistical legislation*.

In view of the strong support received, the 2018 Conference of European Statisticians plenary session will be invited to endorse the Guidance, subject to the amendments presented in this note. The Conference is also invited to agree with changing the title to *Guidance on modernising statistical legislation*.

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I. Introduction

1. This document summarizes comments made by members of the Conference of European Statisticians (CES) on the *Guidance on common elements of statistical legislation*. The Secretariat carried out an electronic consultation on the recommendations in April/May 2018.

2. The Guidance is prepared by a Task Force set up in April 2016, composed of Latvia (co-chair), United Kingdom (co-chair), Albania, Armenia, Australia, Canada, Croatia, Germany, New Zealand, Slovenia, Eurostat, UNECE and the United Nations Statistics Division.

3. The Bureau of the Conference of European Statisticians (CES) reviewed the draft Guidance in February 2018 and requested the Secretariat to send the document to all CES members for electronic consultation.

4. The following 40 countries and one international organization replied to the consultation: Armenia, Australia, Austria, Belarus, Belgium, Canada, Chile, Colombia, Croatia, Denmark, Finland (on its own behalf and as the Chair of the Task Force on Exchange and Sharing of Economic Data), Georgia, Germany, Hungary, Italy, Japan, Latvia, Lithuania, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United States and UNSD.

5. The document also includes the responses of the Task Force to the comments and, if relevant, proposed changes in the text of the Guidance. In such cases, the text of the Guidance is in italics, with underlined additions and deletions shown with strikethrough.

II. General comments on the usefulness of the Guidance

6. All responding countries and organizations considered the Guidance ready for approval by CES, subject to the amendments resulting from the comments provided in the consultation.

7. All responding countries and organizations also indicated that the document provides useful guidance on common elements of statistical legislation, and agreed with the conclusions.

8. Many countries acknowledged the value of the Guidance. General remarks of appreciation for the importance and usefulness of the Guidance were made by a number of countries including: Austria, Australia, Belarus, Canada, Chile, Colombia, Croatia, Finland, Lithuania, Germany, Mexico, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Switzerland, the former Yugoslav Republic of Macedonia and Turkey. Countries made the following general remarks:

(a) Austria: a very profound document to support countries in reinforcing their statistical legislation.

(b) Belarus: the Guidance, in addition to the main elements of statistical legislation, clarifies what each element results in. The Guidance also provides best practices in national statistical legislation using country case studies. It will be useful for the improvement of statistical legislation of all countries.

(c) Canada: the document provides a wide scope of options for any country to amend or adopt a statistical law based on common elements, and provides peripheral information necessary for the amendment or adoption of such law, including advocacy efforts, the legislative process or relation to other legislation. The continued evolution of statistical legal frameworks is crucial to National Statistical Systems to remain relevant to the fast-paced changes that countries are facing. The collaboration and sharing expertise is at the centre of achieving successful global recognition of the national statistical systems.

(d) Chile: the Guidance is very helpful since it highlights the structural elements of every regulatory statistical framework; it offers elements that countries can use depending on their situation and interest. Chile is planning to use the Guidance in discussing the new legislation.

(e) Colombia: the document represents an effort to identify a common path in the regulatory and institutional strengthening of the National Statistical System

(f) Croatia: the document is useful for statisticians and legal services involved in preparation and drafting of the law.

(g) Finland: the document provides excellent guidance for all interested to develop legislation for National Statistical Systems. Finland particularly appreciated the background information and best practices from other countries.

(h) Lithuania: the Guidance is very useful for reviewing or revising statistical legislation.

(i) Mexico: the document helps to identify what is missing in our legislation and identify opportunities to improve our legal framework.

(j) New Zealand: the Guidance's value is increased through the work performed in each chapter—taking different viewpoints and/or using different forms of analysis. This allows agencies and institutions to gain value from the Guidance regardless of the state or nature of their current legal landscape or institutional structures.

(k) Norway: the Guidance will be useful in the process of commenting on the committee proposal to harmonize the Norwegian statistical law with EU law and the recommendation of the latest European peer-reviews.

(l) Poland: the document provides a comprehensive picture of both the perfect national statistical legislation and the factors that should be taken into account when it is prepared/revised. The added value of the Guidance is identification of strong correlation between statistical legislation and institutional environment of NSI. The document highlights all international quality standards and fundamental principles for official statistics.

(m) Portugal: the document shows an important reflection on how a statistical system should be structured.

(n) Slovakia: the Guidance might be very useful for those countries that are in the process of establishing a new Law on statistics or revising and modifying the existing one. Slovakia is planning to use the Guidance in preparing an update of its statistical law and particularly appreciates considering the highly relevant issues such as the population and housing census.

(o) Spain: the document is a very inspiring guide.

(p) Switzerland: the Guidance will be a very helpful tool to elaborate a revision project of the Federal Statistic Act, which will be undertaken in the next few years.

(q) The former Yugoslav Republic of Macedonia: the document is useful because of the emphasis on the basic statistical principles: professional independence, integrity and accountability of the national statistical system.

(r) Turkey: a useful document for high-level managers of NSOs who intend to revise their statistical legislation. The country case studies are enlightening and inspiring. NSOs should be encouraged to review and update the national Statistical Law and other related legislation according to the Guidance.

(s) UNSD: the Guidance can be considered as an operational extension of the Generic Law on Official Statistics (GLOS) covering all ECE countries with a potential global outreach. Thus, the update of the *Handbook of Statistical Organisation*, as endorsed by the 48th session of the UN Statistical Commission, will benefit from these legislative guidelines developed by UNECE.

II. Cross-cutting issues

9. Countries provided numerous valuable comments and inputs, also presenting their national perspectives and experiences regarding various elements of the legislation. The Task Force highly appreciates all the contributions. The Task Force emphasizes that the Guidance proposes common elements that the countries are invited to consider while modernizing their statistical legislation, but it is up to each country to decide whether to include any of the described elements in their national legislation, taking into consideration the national circumstances.

A. Structure and editing of the document

10. Australia proposed to change the title of the document to "*Guidance on modernising statistical legislation for modern statistical systems*" to fully capture the content of the document which is now much more than common elements of statistical legislation. Australia made also several proposals to improve the document structure such as renaming chapter 6 to "*Guidance on developing, modernizing and reinforcing legal frameworks for official statistics*", adding an introductory paragraph giving an overview of all the sections of the chapter and moving the section "*Governance of National Statistical systems and legal aspects*" to a standalone chapter. Additionally, Australia proposed adding an introduction paragraph to chapter 7.

11. The Task Force agreed with the suggestion to change the title of the document to ***Guidance on modernising statistical legislation*** to better reflect its contents. In the final editing, the Task Force will also introduce the changes proposed by Australia into the document structure.

12. Belarus proposed to highlight the common elements that should be obligatorily included and those that are optional.

13. The Task Force leaves it at the discretion of each country to decide whether to include any of the described elements in their national legislation, taking into consideration the national context.

14. Russian Federation noted that chapter 1 repeats briefly some of the content that is included in further chapters, and annex 3 repeats the common elements of statistical legislation and their outcomes, and asked for the document to be shortened. Norway also proposed to shorten the document and highlight the most important sections.

15. The Task Force proposes to change the title of chapter 1 to "*Introduction and executive summary*" to inform the reader of the brief overview it contains to capture key elements of further chapters for convenience of a busy reader.

16. The Task Force explains that the common elements and their intended outcomes are repeated in annex 3 intentionally to show the changes made compared to the *Generic Law on Official Statistics for the countries of Eastern Europe, Caucasus and Central Asia*, which was used as the basis of this Guidance. The readers familiar with the Generic Law may find this part particularly useful. The Task Force would like to emphasize that the Generic Law on Official Statistics was tailored for Eastern Europe, Caucasus and Central Asia, and remains valid as such. The guidance is an extension of the GLOS covering legal provisions supporting the modernisation of national statistical systems with a global outreach. The GLOS however remains fully aligned with the Guidance. Other countries may also benefit from comparing the extended Guidance and the Generic Law to find solutions from either source to fit national circumstances.

17. Comments of editorial nature, also regarding particular wording, will be addressed in the final editing of the Guidance.

B. Organization of the National Statistical System

18. Colombia suggested including in the Guidance more emphasis on the responsibility of all Producers of Official Statistics for the quality of statistical production, in particular in paragraph 60.

19. The Task Force will amend paragraph 60 by adding the underlined sentence:

> *"The Law should also define the requirements for the Other Producers of Official Statistics, but not list them by name or by exact statistical areas to allow for flexibility. <u>All producers of official statistics should be responsible for the continuous improvement of the quality of statistics.</u>"*

20. Colombia suggested as well adding in paragraph 65 that it is possible to adopt in the statistical law the UN fundamental principles of official statistics, the European Statistics or the National Code of Practice and the OECD Recommendations on Good Statistical Practice.

21. The Task Force will add the following underlined sentence in paragraph 65:

> *"Statistical legislation should define the key principles of official statistics based on the Fundamental Principles of Official Statistics, the European Statistics or National Code of Practice and the OECD Recommendations on Good Statistical Practice, as well as on key statistical standards agreed internationally. <u>The countries can further elaborate these principles by developing a National Code of Good Statistical Practice among other instruments.</u>"*

22. Colombia offered a case study of how it established a quality certification system, through which statistics produced within the national statistical system becomes official statistics.

23. The Task Force welcomes the proposal of Colombia's case study as a valuable addition to the Guidance.

24. Colombia asked for several amendments to the Guidance to describe more explicitly the requirements for quality management and quality evaluation.

25. The Task Force notes that common element 8.1 requires a strong commitment to quality as it calls for "continually assessing and improving the quality of official statistics". The Task Force discussed at length the borderline between good practices and the legal framework, and therefore, leaves the format of such continual quality assessment and improvement to countries' own consideration.

26. Colombia proposed that element 5.3, the criteria for inclusion as official statistics, should refer to statistics and not to a producer, as given producer may meet the criteria for some statistical data but not the others and be based statistical quality recognized on international level.

27. The Task Force clarifies that in this model, agreed by the Task Force after long consultation, the law defines the criteria for the Producers of Official Statistics based on which the Chief Statistician decide on the inclusion of producers in the National Statistical System as Producers of Official Statistics. The inclusion of their deliverables and related activities as official statistics is decided by the Chief Statistician in the draft statistical programme or other means depending on the national context. Official statistics are defined in element 1.2. To increase clarity, the Task Force will change the title of common element 5.3 to "*Criteria for inclusion as producers of official statistics*".

28. Colombia proposes not to include the mandate of Other Producers of Official Statistics in element 3.7 separately from the mandate of the NSO, and proposed to include in the definition of the NSS, common element 1.4, the components of the NSS and the possible coordination tools. Similarly, Turkey suggested elaborating in common element 3.2 the main authorities in the NSS, and broaden the duties and responsibilities of the NSO to clarify the coordination mechanism in the NSS and the NSO's coordination role.

29. The Task Force clarifies that Other Producers of Official Statistics have a separate mandate because NSO is the leading authority of the NSS and its mandate includes the coordination of the NSS, as specified in element 3.2. The Task Force proposes not to list in the law the authorities producing official statistics to avoid the need for frequent changes of the law that might risk opening the national law to frequent revisions. The definition of the NSS is kept generic, and the responsibilities of the National Statistical Office and Other Producers of Official Statistics and the coordination mechanism are defined in the section III of the common elements. The NSO is given a strong leading role in Article 1.4, which states that the NSO "*is the leading authority of the National Statistical System*".

C. Chief Statistician

30. Australia noted that in Chapter 2, both "Head of NSO" and "Chief Statistician" are used while "Chief Statistician" is used in all other chapters and proposed to align the terminology.

31. The Task Force notes that the term "Chief Statistician" is used consistently throughout the common elements of statistical legislation and their intended outcomes in chapters 4 and 5 respectively, which term should be replaced with the appropriate official title used in a given country in national legislation. For the reasons of consistency, the Task Force will align the terminology in other chapters as well to make sure that the term "Head of NSO" is used only where the emphasis on the leadership of the NSO is necessary.

32. Few countries, including the Netherlands and Turkey noted the usefulness of having more detailed criteria for non-political and competence-based appointment of the Chief Statistician in the law, and suggested adjusting the length of the term of office.

33. The Task Force agrees that such provisions can be added by countries into their national legislation as appropriate in the national context.

D. Coordination Committee and Statistical Advisory Council and other advisory bodies

34. Australia noted that it be useful to add in paragraph 19 of Chapter 1 an explanation to clarify the difference between the coordination committee for official statistics comprising producers of official statistics and the Statistical Advisory Council comprising representatives of users of official statistics, wherever those official statistics are produced (i.e. not just those produced by the NSO). Australia mentioned as well that the Statistical Advisory Council may benefit from including providers of statistical information into the discussions in addition to users. Colombia provided a number of comments on the role of Statistical Advisory Council, and proposed that a degree of subordination between the Statistical Advisory Council and the coordination committee for official statistics should be determined in the law to avoid overlap of functions. Further, it was emphasized that other advisory bodies be formed only if the Chief Statistician requires them for a specific task.

35. The Task Force will clarify the difference between the two bodies in the Guidance starting from the introduction and will add in paragraph 19 the following underlined text:

> *"The coordination committee will support the NSO in the coordination of all activities within the NSS. <u>While the Statistical Advisory Council representing users of official statistics is outside of the NSS, the coordination committee consists of producers of official statistics, who are part of the NSS".</u>*

36. The Task Force agrees that it may also be useful, depending on the topic, to invite data providers to participate in the meetings of Statistical Advisory Council. Countries may also decide to include data providers' representatives as regular members in the Council if they see fit to do so. Statistical offices may also have a separate advisory group comprising representatives of data providers and respondents.

37. The coordination committee for official statistics is a new element introduced in the Guidance. In the model described in the Guidance, it is a committee "*consisting of representatives of all Producers of Official Statistics in the country, and operating under the chairmanship of the National Statistical Office*", which shall coordinate all activities within the National Statistical System. The intention is that the coordination committee supports the NSO in the coordination of all activities within the NSS. The activities of the committee are specified in element 3.3 of Chapter 4.

38. The Statistical Advisory Council is defined as an advisory body that "*shall advise the government and the Chief Statistician on issues of strategic importance to official statistics*" and is composed of a broad representation of users. It is not part of the national statistical system and does not have either decision-making or supervisory function in relation to the NSS. The Statistical Advisory Council provides its opinion on the programmes and their implementation that represent users' views, ensuring the relevance of official statistics and promoting transparency and accountability of the NSS. The tasks of the Statistical Advisory Council are specified in the element 4.4 in Chapter 4.

39. The Task Force agrees that other advisory bodies should be formed when they are required in specific matters by the Chief Statistician and each country may decide whether to include such a possibility in their legislation.

40. Turkey proposed that Chief Statistician should chair the Statistical Advisory Council to strengthen the coordinating nature of the NSO and fulfil the task of evaluation of the implementation of the statistical programmes.

41. The Task Force recalls that as per the element 4.3, the chairperson of the Council shall be elected from its members. The common elements suggest that the Chief Statistician could provide the secretariat to the Council leaving the chairmanship to user

representatives. This is intended to give prominence to user views and independent evaluation of how the NSS serves the users and how relevant the official statistics are considering their needs.

E. Statistical programmes

42. Australia suggested removing paragraph 68 and the reference to Parliament approving the statistical programme as the independence of the NSO should extend to establishing its own programme under the full responsibility of the Chief Statistician. Australia pointed to a possible benefit of having a very limited set of legally required statistical topics mentioned in the national statistical law as an argument in funding discussions.

43. The Task Force notes that the governance models of NSSs differ greatly across countries. The common element 5.7, therefore, refers to "the body approving the statistical programmes" instead of for instance the Parliament. The Task Force will review the instances referring to the Parliament and will adopt a similar wording with element 5.7 across the Guidance. The Task Force agrees that a country can decide to have a set of legally required statistical topics listed in its statistical law. However, such a list is not recommended in the Guidance to avoid frequent revisions to the law due to changing user needs.

44. Colombia suggested that only multi-year programme be established in the law (with a duration longer than the term of the government administration) and the annual programme could be created through extraction of the relevant content from the multi-year plan. The statistical programme would be approved by the Statistical Advisory Council, which would also monitor its implementation and could make decisions on the proposed actions.

45. The Task Force clarifies that the model included in the Guidance has two plans: the multi-year plan, as per element 5.5, which defines the strategic development of official statistics, provides a vision and priorities for the development of the NSS and establishes the required deliveries and development actions, weighing them against the necessary resources. The annual plan, as per the element 5.6, is an operational translation of the multi-year statistical programme. The Statistical Advisory Council provides a public users' opinion on the statistical programme before its adoption. The Task Force encourages countries to consider the programming and adjust the tools and decision-making mechanisms as relevant in the national context.

46. Colombia proposed also to modify element 5.2 in chapter 4 to include Other Producers of Official Statistics along the users, respondents and providers of administrative data, which should be consulted in the preparation of the statistical programme and not separately as it is now.

47. The Task Force decided to mention Other Producers of Official Statistics separately from users, respondents and data providers, because of their different standing and relation to the statistical programme. The statistical programme is the work programme to all Producers of Official Statistics. Instead, users, respondents and data providers are stakeholders in the process.

F. Data collection

48. Australia, Colombia, the Netherlands, Portugal, Switzerland and the former Yugoslav Republic of Macedonia provided comments related to the data collection,

including accessing data from administrative sources and their use for statistical purposes, referring to both the narrative in Chapters 2, 3 and 7 as well as the common elements and their outcomes in Chapter 4 and 5 respectively.

49. Australia emphasized the challenge of collecting information from across borders from respondents operating increasingly often across jurisdictions and legislative frameworks. It was proposed include an obligation for respondents in country to furnish relevant statistical information held by head offices residing in other countries.

50. Australia noted also that paragraph 140 includes scientific research as an extension of the use for statistical purpose and proposed to add it in element 2.2 in chapter 4. Norway underlined that the mandate for data collection should cover method development and experimental use of data for developing new and better statistics.

51. The Task Force would like to draw attention to the definition of use for statistical purposes in common element 2.2: "*the exclusive use of data for the development, production and dissemination of official statistics, quality improvement, statistical analyses and statistical services*". The Task Force considers that the current formulation, especially development and quality improvement of official statistics covers method development and experimental use of data for developing better statistics. Use for statistical purposes does not comprise the scientific research. In paragraph 140, scientific research is mentioned as an additional purpose for which statistical data may be used if access is granted. NSS have a wide mandate to collect data for statistical purposes, but not for scientific research. Access to statistical data may be granted for scientific research purposes in a specific process described in element 7.9.

52. Colombia reminded that the producers of official statistics should share the administrative data for which they are responsible and proposed to include it in paragraph 69. It was also requested to describe in paragraph 84 more precisely the NSS mandate for data collection from public and private sources for statistical purposes and to say in paragraph 159 that the NSO as the coordinator of the NSS should have sufficient authority to access the administrative data for statistical purposes. Colombia mentioned also that there could be penalties established for non-compliance with providing data for statistical purposes by public and private entities.

53. The Task Force underlines that the narrative in chapters 2, 3 and 7 has an explanatory role to provide information on the opportunities and challenges in the context of which the common elements should be considered. The precise wording regarding the common elements and their intended outcomes is always included in chapters 4 and 5. The Guidance suggests that all Producers of Official Statistics have access to administrative data necessary for producing statistics. The common elements recommend granting the Producers the right to exchange individual data within the NSS in the respective area of competence of each Producer. Each such transmission must be authorized by the Chief Statistician and be documented. This is captured in common element 6.4 and 7.8, but the Task Force agrees to reiterate it briefly in paragraph 69. The Task Force will also change element 12.2 and add the underlined text:

> *"In the case of failure to submit individual data, in the case of wilful provision of false data or in the case of failure to comply with the provisions of data submission [as in Article] respondent <u>or private entities providing data on statistical units other than themselves</u> may be fined as regulated in [name of legal act]. (GLOS 36.1)"*

54. The former Yugoslav Republic of Macedonia noted that using private data sources for statistical purposes is ambitious and possibility to implement some solutions will depend on the national context.

55. The Netherlands expressed appreciation that the private data sources are included in the mandate of data collection and shared how the ability of NSO to impose fines greatly improved the response rates in compulsory business surveys.

G. Statistical confidentiality and data exchange

56. Australia, Belarus, Belgium, Colombia, Finland as the Chair of the Task Force on Exchange and Sharing of Economic Data, the Netherlands, Poland, Switzerland, Turkey and United States provided valuable comments on the issues of statistical confidentiality, particularly in the context of the exchange of data between the Producers of Official Statistics and international data sharing, which are covered extensively throughout the Chapters 2 to 7 of the Guidance.

57. Australia pointed out that the discussion on privacy and confidentiality in the document focuses on regulatory controls but it would also benefit from including a discussion on transparency and effective communication with stakeholders, which contributes to building trust and supports continued participation of providers of statistical information.

58. The Task Force will add the following sentence as the last sentence of paragraph 138 to respond to this concern:

> *"Transparency and effective communication with stakeholders contribute to building trust and support continued participation of providers of statistical information"*

59. Australia also mentioned that in element 7.2, which discusses explicit consent as the only mechanism available to enable disclosure of identifiable records, there is no provision for a case where disclosure of an identifiable record may contribute to an effective NSS or if an identifiable record involves information that is not sensitive to that statistical unit.

60. The Task Force has given particular consideration to effectiveness of the NSS, and allows the exchange of individual data among producers of official statistics in element 7.8. The Task Force will also replace "*statistical unit*" in common elements 7.2 and 7.3 with "*a natural or legal person*":

> *"[in 7.2] Statistics, which may make it possible to identify a ~~statistical unit~~ natural or legal person, may be disseminated only if the ~~statistical unit~~ person has unambiguously given its consent to the disclosure of data. (...) [in 7.3] Each Producer of Official Statistics shall protect confidential data in such a way that the ~~statistical unit~~ natural or legal person cannot be identified, either directly or indirectly, when account is taken of all relevant means that might reasonably be used by a third party."*

The Task Force will replace *Statistical unit"* with "*a natural or legal person*" also in other places in the document referring to the common elements mentioned above.

61. Belgium noted that in paragraph 70, the law should ensure that also enterprises are mentioned in addition to individuals whose data collected for statistical purposes should not be used for any administrative purposes or any decision regarding them.

62. The Task Force will modify paragraph 70, to be in line with the related common elements:

> *"The Law should assure respondents that data collected for statistical purposes are not used for any administrative purposes or any decisions regarding ~~individuals~~ natural and legal persons."*

63. Colombia proposed not to include a provision on the access to individual data for researchers in the common elements as it may be in conflict with other national laws, especially those on the protection of personal data for other than statistical purposes. It was also proposed that penalties for infringements on data confidentiality should be established. Colombia also offered its example for a case study on the exchange of microdata between the NSO and the central bank.

64. The Task Force decides to keep the provision on the access to individual data for researchers in the common elements as it is a common practice among NSOs and it needs to be carefully regulated to minimize the risk of misuse. The Task Force considers it important to enable researchers' access to statistical data, if and when it is so decided by the Chief Statistician in line with the statistical law. Each country should decide whether and how they allow the use of statistical data for scientific research. The provisions on granting the access to data for scientific research are included in the common element 7.9. The Task Force will modify element 12.1 by adding the underlined text:

> *"Any person or organization with access to data before its release, or to data subject to statistical confidentiality, using this information for purposes other than those authorized by the Statistical Law or violating confidentiality of these data, shall be prosecuted as regulated in [name of the legal act for example for transactions at financial markets for abuse of insider information]. (GLOS 35.1 - 35.2)"*

65. Finland, as chair of the Task Force on Exchange and Sharing of Economic Data, notes that the need to exchange data among statistical authorities may concern also other confidential data than individual data, for instance confidential aggregates.

66. The Task Force will change the common element 7.8 to state:

> *"National Statistical Office and Other Producers of Official Statistics are entitled to exchange individual data, including identifiers, and other confidential data, exclusively for statistical purposes in their respective area of competence in official statistics."*

and similarly, in the common element 11.3:

> *"National Statistical Office with Other Producers of Official Statistics, as relevant, may enable the voluntary exchange of individual data and other confidential data exclusively for statistical purposes in the area of competence of a Producer of Official Statistics of a foreign country".*

The Task Force will also modify element 7.1 as follows:

> *"~~Individual~~ Data subject to confidentiality are those that allow natural or legal persons to be identified, either directly or indirectly, thereby disclosing individual information. In addition, information declared as a state secret on the basis of [name of the legal act] are subject to statistical confidentiality. (GLOS 20.1)".*

The Task Force will add the following sentence to the common element 7.2, as per request by Finland as chair of the Task Force on Exchange and Sharing of Economic Data stating:

> *"The Chief Statistician may waive the protection of statistical confidentiality of data that are available to the public, in accordance with other legislation, while considering the related quality and reliability issues."*

This change is in line with Article 25 of the ESS Statistical Law.

67. The Netherlands also raised the question why state secret data are mentioned separately in the definition of confidential data in the element 7.1 , if all individual data are confidential.

68. The Task Force notes that it may not be necessary to include in the national statistical law a provision on data that are considered state secret. Some countries have this practice and the state secret may also refer to aggregated information.

69. Australia also pointed out that a major difficulty in the international data sharing is the inability to enforce national legislation across legislative boundaries. Belarus highlighted the need to define the terms under which individual data are exchanged internationally. The Netherlands noted that the trust and confidence in official statistics could be lower in NSS where confidential data are handed over to other statistical institutes or transmitted internationally because of the increased risk of misuse. Poland stated that although the need for international microdata exchange among producers of official statistics intensifies, it should remain voluntary and restricted to exceptional and legally based cases, in which partners who receive data have mechanisms of ensuring statistical confidentiality no lesser than in the country sharing the data. Also, responsibilities in case of confidentiality breaches must be clarified. Poland provided also a brief description of microdata sharing between the Polish National Central Bank and Statistics Poland.

70. The Task Force agrees with the risks and the challenge of legislative boundaries, and emphasizes that the exchange of data among statistical authorities of different countries remains at the discretion of each country. The exchange is voluntary and conditional to the existence of the necessary legal framework at the receiving organization, as specified in the common element 11.3:

> *"National Statistical Office with Other Producers of Official Statistics, as relevant, may enable the voluntary exchange of individual data exclusively for statistical purposes in the area of competence of a Producer of Official Statistics of a foreign country. National Statistical Office shall ensure that the recipient has the necessary legal framework in place for the full protection of confidential data. Each such transmissions must be authorized by the Chief Statisticians of the involved National Statistical Systems ~~Producers of Official Statistics~~ and the conditions be documented in a mutually signed agreement. Such agreements do not diminish the responsibility of the Producer of Official Statistics to ensure the confidentiality of the data they exchange."*

The Task Force appreciates the example shared and encourages Poland to provide a case study that can be included in the Guidance.

71. The Task Force agrees that sharing microdata even among the Producers of Official Statistics nationally may increase the risk of misuse, which is why, element 3.7, requires that "*Other Producers of Official Statistics shall be professionally independent entities with exclusive or primary activities related to the development, production and dissemination of official statistics.*" Each country will need to consider whether the national framework allows including in the legislation the option to exchange data for statistical purposes within the NSS, or with statistical authorities of other countries. Any data exchange within the NSS, and with statistical authorities of other countries, has to be authorized by the Chief Statistician case by case.

72. Switzerland proposed that it would be important to define in the law the meaning of anonymization and pseudonymization as it is done now in the footnote 4 on page 111 of the Guidance.

73. The Task Force notes that the terms anonymization and pseudonymization are only defined in the footnote as they are not referred to in the common elements. In practice, the process of anonymization is described in element 7.7 ("*Producers of Official Statistics may produce and release public use files from individual data only if the data have been processed so that identifiers have been removed and natural or legal persons cannot be identified in any way, either directly or indirectly*"). The Task Force agrees that if the country decides to use the term "anonymization" in the national legislation, it should be defined in the law. The Task Force will repeat the footnote with the definitions in chapter 3B where the term is used for the first time.

74. Turkey made a proposal of establishing a Data Confidentiality Expertise Board to take decisions on conflicts about statistical confidentiality.

75. The Task Force considers it a useful idea to suggest establishment of a Data Confidentiality Board as an internal organ of the NSS. Such a board could advise the Chief Statistician on the cases of data sharing for statistical purposes and researchers' access to statistical data. The Task Force will mention this possibility in paragraph 139 in chapter 3 as a means of prevention of data misuse.

76. The United States commented that it would be useful to recognize within chapter 3 that the issues of maintaining confidentiality, integrating new data sources and national and global data sharing are linked and there can be trade-offs between data protection and data sharing. Various policy approaches such as tiered access, along with emerging approaches in disclosure avoidance methods such as secure multiparty computation, may mitigate some of these trade-offs. It was noted that with proper measures, increasing both access and confidentiality is possible.

77. The Task Force agrees that these topics are interlinked and it will add the following text in paragraph 116 of the introduction to chapter 3

> *"It needs to be emphasized that maintaining confidentiality, integrating new data sources and national and global data sharing, mentioned among the challenges and opportunities in this chapter are linked and should not be considered in isolation."*

III. Specific comments on the chapters of the Guidance

78. Many countries also provided specific comments on various chapters of the Guidance. The substantive comments are presented in this section. Several editorial comments and suggestions provided by countries will be taken into account in finalising the Guidance but are not reported in this note.

A. Chapter 1. Introduction

79. Australia, Belarus, Malta and Mexico expressed appreciation for the content of this chapter as a useful overview of the background of the document, its rationale and a general approach to the subject.

B. Chapter 2. Review of current legal and institutional frameworks of official statistics

80. Malta and Mexico noted the usefulness of the chapter for evaluating the existing legislation and its strengths and shortcomings.

81. Colombia proposed that in paragraph 99, the requirement for the dissemination policy should not be "unified statistical terminology", but it should refer to the fundamental principles of official statistics and good practices.

82. The Task Force will make the following change in paragraph 99:

> *"Considering the current shortcomings, and the important benefits of having a dissemination policy, the Statistical Law could include a requirement to establish a coordinated dissemination policy with transparent procedures to be applied across the NSS, in line with UN Fundamental Principles of Official Statistics, the European Statistics or the National Code of Practice and the OECD Recommendations on Good Statistical Practice. A requirement to maintain a unified statistical terminology to be applied across official statistics could be included in the Statistical Law as part of the dissemination policy."*

83. The former Yugoslav Republic of Macedonia expressed the opinion that statistical laws need to regulate the employment process of the NSO staff in a way that the managerial staff should be recruited among the existing staff on the lower position with needed experience and knowledge in the statistical institution.

84. The Task Force highlights that as described in the common element 3.6, the Chief Statistician shall independently decide on the appointment of the staff.

C. Chapter 3. Review of the operational environment of statistical production

85. Belarus proposed that Chapter 3 should specify how statistical legislation addresses problems caused by the environment where statistical production is functioning.

86. The Task Force agrees that the statistical production is influenced by the general legislative and cultural environment in which statistics are produced. Therefore, flexibility and careful consideration on a national level in applying the guidance are imperative.

87. Belgium and Canada brought up the role of media and changing communication environment as an additional challenge and opportunity for national statistical offices.

88. The Task Force will replace "*dissemination*" with "*dissemination and communication*" wherever appropriate throughout document to highlight the wider challenges of the communication of statistics. The Task Force agrees that the changing communication environment and media have an impact for the work of the NSOs but considers that the good practice guidance is outside of statistical legislation. The Task Force discussed this topic to some extent under the sections "Competition from the information industry" and "Public trust and prevention of misuse", as well as reflect it in the tasks of the Chief Statistician in the element 3.6: *"(...) The Chief Statistician shall lead the strategic development of official statistics, partnerships and stakeholder relations to enhance the value of official statistics. (...) The Chief Statistician shall facilitate the correct interpretation of statistics and is entitled to comment on the use and misuse of statistics."* For an in-depth discussion on the roles of NSOs in changing communication environment, the Task Force would like to refer to the ongoing project on Statistical Data Dissemination and Communication under the High-Level Group for the Modernization of Official Statistics.

89. Colombia proposed to extend the responsibility of responding to SDGs to Other Producers of Official Statistics as well.

90. The Task Force will modify paragraph 137 by adding the underlined text

"Now, NSOs have a key coordinating role in the development of statistics for SDGs, and in the organization of the related data flows nationally, involving Other Producers of Official Statistics and a number of other players."

91. Russian Federation requested adding an explanation of "operational environment of statistical production" in Chapter 3A.

92. The Task Force will add the following explanation in paragraph 114:

"114. The chapter reviews the operational environment of statistical offices to take into account the key challenges, expectations and limitations that could have implications on the legal and institutional frameworks of official statistics. In this context the term 'operational environment' stands for political, social, legislative, economic, cultural and natural environmental factors that may significantly affect statistical activity".

D. Chapter 4. Common elements of statistical legislation

93. Austria, Malta and Mexico appreciated the chapter as a valuable tool for reviewing existing and drafting new statistical legislation.

94. Colombia proposed to amend the scope of the law in element 1.3 to include the producers of statistics that would be subject to the law.

95. The Task Force highlights that the parties to the law are defined in the common element 1.5. The Task Force proposes not to list in the law the authorities producing official statistics to avoid the need for frequent changes of the law that might risk opening the national law to frequent revisions.

96. Croatia suggested that the guidance could recommend incorporating some elements of the EU statistical law into national law.

97. The Task Force did not include specific guidance on incorporating EU law into the national law as the Guidance is targeting all CES countries.

98. Poland proposed to maintain the original formulations of the Generic Law on Official Statistics (GLOS) for Eastern Europe, Caucasus and Central Asia in elements 1.2(b) and (c), 5.6, 6.4, 6.9, 6.10, 7.10 and 10.5.

99. The Task Force underlines that GLOS, which was tailored for and agreed with EECCA countries, remains relevant and valid. The revisions made in the common elements reflect the discussions in extending the guidance for all CES countries but the countries may decide to use the GLOS provisions if they find them more appropriate. One of the changes made was removing all the references to the law itself from inside the same document as all the activities described in the law need to be carried out in accordance with the law. The Task Force removed also the reference to statistical programme from the definition of official statistics because not all CES countries have statistical programmes. The Task Force decided to add the mention of major trainings in the statistical programmes to underline their importance as usual knowledge development activities are outside of the scope of legislation. The Task Force also removed the provision that special confidentiality or secrecy provisions in other legislation cannot be invoked unless the legislation explicitly excludes the use of data for statistical purpose as it may open the door to introduce such provisions in other legislation.

100. Turkey mentioned that NSO should have a revision policy and revision guidelines.

101. The Task Force considers a revision policy part of a dissemination policy referred to in element 9.4.

E. Chapter 5. Intended outcomes of the common elements of statistical legislation

102. Austria and Mexico praised the content of the chapter, which allows the NSO to prepare the supporting arguments for the establishment of legislation following the common elements.

F. Chapter 6. Guidance on reinforcing legal frameworks of official statistics

103. Mexico appreciated in particular the graph 2 presented in this chapter, which clearly outlines the process of revising the law.

104. Colombia highlighted that all members of the NSS should be involved in the consultation of the draft law. In the development of the vision, the consultation with the users is key in determining the information needs in the country and assessment of the usefulness of the information that is already available.

105. The Task Force will make the following change in paragraph 202:

> *"Close collaboration among all members of the NSS and consultation with stakeholders is therefore necessary throughout the process".*

106. Poland proposed to change the title of graph 2 (in Chapters 1 and 6) and the last sentence of paragraph 32 to reflect that the graph represents steps of the process of statistical legislation for both new and revised statistical legislation. Poland also requested to add to the graph 2 the "Identification of key stakeholders" during the planning phase of revising statistical legislation (steps 1-3 of the graph).

107. The Task Force will change the title of graph 2 to:

> *"Ten steps of the process of creating new and revising existing statistical legislation"*

and the last sentence in paragraph 32 to

> *"The process of creating new and revising existing statistical legislation includes ten steps (see the graph)."*

108. Regarding the identification of the key stakeholders, the Task Force did not attempt to describe this step in detail as the stakeholders differ in each country depending on their governance structure. Receiving a case study reviewing the stakeholders in a country would be a welcome addition to the Guidance. The importance of various stakeholders throughout the process is described in detail in Chapter 6B.

G. Chapter 7. Emerging issues related to statistical legislation

109. Australia proposed to articulate more clearly to the readers that while the open data communities often stress privacy as the paramount concern for building, maintaining and nurturing public trust and social license, and statistical communities stress confidentiality, both communities have the same intent. Australia also suggested clarifying that open data can include both aggregated data and microdata, and replacing the references to anonymization with confidentiality in this section.

110. The Task Force will add to paragraph 398 the following text:

"To realize the full potential of official statistics as open data, statistical offices need to ensure that data can be stored, accessed and shared safely within a robust governance framework that fully protects privacy and confidentiality. Open data communities often stress privacy as the paramount concern for building, maintaining and nurturing public trust and social license, whereas statistical communities stress the need to fully ensure confidentiality in line with the statistical legislation".

111. The Task Force will review the usage of "*anonymization*" and "*confidentiality*" in this section and add a reference to five safes framework in the final editing.

112. Colombia requested highlighting that if a Producer of Official Statistics decides to use open data as a source, the statistics produced must have the same quality attributes as in case of other data sources.

113. The Task Force would like to recall that the principles of responsible data collection are captured in the common element 6.2 "*Data collection shall be designed with due consideration to quality of statistics, costs of data provision and response burden.*"

114. Poland requested mentioning that to fulfil the criterion of availability, the data must be in machine-readable and open formats. It was also proposed to move the mention of third-party copyrights to a separate paragraph from paragraph 380, add a short paragraph on importance of the appropriate presentation of open statistics and provision of the suitable metadata, and add a reference to Open Data Watch organization. Poland noted that the open data principle of machine readability is independent from the statistical principle of comparability as data can be both machine-processable and comparable, any of the two or neither and therefore proposed to rephrase this point.

115. The Task Force will change the first bullet under paragraph 380 as follows:

"Availability: the data must be available as a whole at no more than a reasonable reproduction cost. The data must also be available in a convenient, modifiable form including machine-readable and open formats."

116. The Task Force will add the following sentence as the second sentence of paragraph 392:

"An appropriate presentation of open statistics and provision of the suitable metadata is an important element of making open statistics available for users."

117. The Task Force clarifies that the principle of machine readability and comparability in paragraph in 406 are not put together as contradictory but to illustrate the difference between the approaches of the two communities.

118. Australia proposed to emphasize the involvement of stakeholders in the section dedicated to censuses especially if significant changes in census operation are proposed. It should be also mentioned that although an NSO should not be pressured by an outside interest group, it is important to consult with the wider community regarding the questions to be included in a census.

119. The Task Force will add in paragraph 447

"Although an NSO should not be pressured by an outside interest group, it is important to consult with the wider user community and other stakeholders the questions to be included in a census from the viewpoint of data needs and relevance."

120. The Task Force will also modify paragraph 445 as follows:

"Many government agencies have special interests in the results of the population and housing census, and the census operations depend on the government's support and budget allocations. It is important to consult the relevant stakeholders, specifically if significant changes to census are proposed, however, decisions regarding data sources and census methodologies need to be taken entirely within the NSS."

121. Canada suggested including a reflection on how the law anticipates the emerging issues or develops legal provisions that countries could build upon to address these issues.

122. As mentioned in Chapter 3, section 7 of the Guidance "*178. A successful NSS should have the flexibility to allow it to respond to changing conditions and circumstances without needing to change its legislation frequently. This can only be done by having a strong set of principles that sets the foundation for the development, production and dissemination of official statistics. (...) One characteristic of a flexible legislative framework is the ability to develop and maintain definitions, methodologies and standards for official statistics without the need to amend legislation when they change.*" As indicated in chapter 6A it is recommended that countries regularly review whether the national legislation appropriately reflects the emerging needs. This is also why the Task Force decided to include the overview of emerging issues in the Guidance. The Task Force proposes to review the Guidance after about 5 years, including the section on emerging issues.

IV. Conclusions and further work proposals

123. This section summarizes both the comments on the Chapter 8 and future work proposals included in specific comments related to chapters and issues.

124. Australia expressed support for an ongoing mandate for a group to discuss emerging issues such as open data, erosion of public trust due to data breaches (e.g. Facebook, Cambridge Analytica), government data leaks, but would be less likely to support an ongoing mandate for a group to focus on common elements of statistical legislation. Australia also agreed to the review of the Guidance in 5 years, and proposed to request the CES to consider what emerging issues should be considered in the next iteration, such as use of subcontractors and cloud services and the adverse impact that such solutions may have on the public trust in the NSO, resulting in lower response rates and consequently, lower quality of statistics. Furthermore, Australia proposed that once the ongoing review of the Fundamental Principles of Official Statistics is completed, the updated principles should be reflected in the Guidance. Australia also proposed to consider how the proposed UNECE group should interact with UNSD's Open Data Group and UNSC/GGIM Statistical-Geospatial Integration Group, and whether the UNECE group should not outsource the relevant sections of the Guidance to those Groups.

125. Australia proposed to promote the Guidance through making it a compulsory read for new Chief Statisticians and senior officers who do not have background in statistical systems, and embedding it in leadership training programmes. Australia also proposed to turn selected parts of the Guidance into standalone documents to make it easier to use for NSO staff.

126. Canada supported the continued collaboration of experts for improvement and efficiency of statistical legal frameworks.

127. Slovakia expressed full support for the conclusions and the proposed way forward.

128. The following proposals have been made for further improvement of the Guidance in the future:

(a) Belarus proposed to supplement Chapter 2 in future with methodology for estimating the degree of impacts of strengths and shortcomings on the activity of the national statistical office. Such work is also reflected in the *CES Recommendations on promoting, measuring and communicating the value of official statistics*.

(b) Canada proposed to enhance Chapter 2 with country cases where shortcomings of legislative and institutional frameworks were addressed.

(c) Colombia proposed to establish mandatory compliance for producers of official statistics with the geo-spatial standards and classifications.

(d) United Kingdom proposed to clarify further the relationship between the coordination of statistical activities within an NSS and the authority NSOs have over those activities.

V. Conclusion

129. All responding countries and organizations supported the endorsement of the guidelines.

VI. Proposal to the Conference

130. In view of the strong support expressed by countries and organizations, the Conference is invited to endorse the Guidance, subject to amendments presented in this document, and to agree with the new proposed title: *Guidance on modernising statistical legislation*.

131. The Conference is invited to advise on the follow-up activities proposed by the Task Force and CES members during the consultation, including reviewing the Guidance in five years.